



GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2009 REGULAR SESSION

HOUSE BILL NO. 216

MONDAY, MARCH 9, 2009

The following bill was reported to the Senate from the House and ordered to be printed.

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TREY GRAYSON
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Adler

AN ACT relating to fiscal matters and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔ Section 1. KRS 136.392 is repealed and reenacted to read as follows:

- (1) (a) Every domestic, foreign, or alien insurer, other than life and health insurers, which is either subject to or exempted from Kentucky premium taxes as levied pursuant to the provisions of either KRS 136.340, 136.350, 136.370, or 136.390, shall charge and collect a surcharge of one dollar and fifty cents (\$1.50) upon each one hundred dollars (\$100) of premium, assessments, or other charges, except for those municipal premium taxes, made by it for insurance coverage provided to its policyholders, on risk located in this state, whether the charges are designated as premiums, assessments, or otherwise. The premium surcharge shall be collected by the insurer from its policyholders at the same time and in the same manner that its premium or other charge for the insurance coverage is collected. The premium surcharge shall be disclosed to policyholders pursuant to administrative regulations promulgated by the executive director of insurance. However, no insurer or its agent shall be entitled to any portion of any premium surcharge as a fee or commission for its collection. On or before the twentieth day of each month, each insurer shall report and remit to the Department of Revenue, on forms as it may require, all premium surcharge moneys collected by it during its preceding monthly accounting period less any moneys returned to policyholders as applicable to the unearned portion of the premium on policies terminated by either the insured or the insurer. Insurers with an annual liability of less than one thousand dollars (\$1,000) for each of the previous two (2) calendar years may report and remit to the Department of Revenue all premium surcharge moneys collected on a calendar year basis on or before the twentieth day of January of the following calendar year. The funds derived

1 from the premium surcharge shall be deposited in the State Treasury, and shall
2 constitute a fund allocated for the uses and purposes of the Firefighters
3 Foundation Program fund, KRS 95A.220 and 95A.262, and the Law
4 Enforcement Foundation Program fund, KRS 15.430.

5 (b) Effective July 1, 1992, the surcharge rate in paragraph (a) of this subsection
6 shall be adjusted by the commissioner of revenue to a rate calculated to
7 provide sufficient funds for the uses and purposes of the Firefighters
8 Foundation Program fund as prescribed by KRS 95A.220 and 95A.262 and
9 the Law Enforcement Foundation Program fund as prescribed by KRS 15.430
10 for each fiscal year. The rate shall be calculated using as its base the number
11 of local government units eligible for participation in the funds under
12 applicable statutes as of January 1, 1994. To allow the commissioner of
13 revenue to calculate an appropriate rate, the secretary of the Environmental
14 and Public Protection Cabinet and the secretary for the Justice and Public
15 Safety Cabinet shall certify to the commissioner of revenue, no later than
16 January 1 of each year, the estimated budgets for the respective funds
17 specified above, including any surplus moneys in the funds, which shall be
18 incorporated into the consideration of the adjusted rate for the next biennium.
19 As soon as practical, the commissioner of revenue shall advise the executive
20 director of insurance of the new rate and the executive director shall inform
21 the affected insurers. The rate adjustment process shall continue on a biennial
22 basis.

23 (2) Within five (5) days after the end of each month, all insurance premium surcharge
24 proceeds deposited in the State Treasury as set forth in this section shall be paid by
25 the State Treasurer into the Firefighters Foundation Program fund trust and agency
26 account and the Law Enforcement Foundation Program fund trust and agency
27 account. The amount paid into each account shall be proportionate to each fund's

1 respective share of the total deposits, pursuant to KRS 42.190. Moneys deposited to
2 the Law Enforcement Foundation Program fund trust and agency account shall not
3 be disbursed, expended, encumbered, or transferred by any state official for uses
4 and purposes other than those prescribed by KRS 15.410 to 15.500, except that
5 beginning with fiscal year 1994-95, through June 30, 1999, moneys remaining in
6 the account at the end of the fiscal year in excess of three million dollars
7 (\$3,000,000) shall lapse. On and after July 1, 1999, moneys in this account shall not
8 lapse. Money deposited to the Firefighters Foundation Program fund trust and
9 agency account shall not be disbursed, expended, encumbered, or transferred by any
10 state official for uses and purposes other than those prescribed by KRS 95A.200 to
11 95A.300, except that beginning with fiscal year 1994-95, through June 30, 1999,
12 moneys remaining in the account at the end of the fiscal year in excess of three
13 million dollars (\$3,000,000) shall lapse, but moneys in the revolving loan fund
14 established in KRS 95A.262 shall not lapse. On and after July 1, 1999, moneys in
15 this account shall not lapse.

16 (3) Insurance premium surcharge funds collected from the policyholders of any
17 domestic mutual company, cooperative, or assessment fire insurance company shall
18 be deposited in the State Treasury, and shall be paid monthly by the State Treasurer
19 into the Firefighters Foundation Program fund trust and agency account as provided
20 in KRS 95A.220 to 95A.262. However, insurance premium surcharge funds
21 collected from policyholders of any mutual company, cooperative, or assessment
22 fire insurance company which transfers its corporate domicile to this state from
23 another state after July 15, 1994, shall continue to be paid into the Firefighters
24 Foundation Program fund and the Law Enforcement Foundation Program fund as
25 prescribed.

26 (4) No later than July 1 of each year, the Office of Insurance shall provide the
27 Department of Revenue with a list of all Kentucky-licensed property and casualty

1 insurers and the amount of premium volume collected by the insurer for the
 2 preceding calendar year as set forth on the annual statement of the insurer. No later
 3 than September 1 of each year, the Department of Revenue shall calculate an
 4 estimate of the premium surcharge due from each insurer subject to the insurance
 5 premium surcharge imposed pursuant to this section, based upon the surcharge rate
 6 imposed pursuant to this section and the amount of the premium volume for each
 7 insurer as reported by the Office of Insurance. The Department of Revenue shall
 8 compare the results of this estimate with the premium surcharge paid by each
 9 insurer during the preceding year and shall provide the Legislative Research
 10 Commission, the Commission on Fire Protection Personnel Standards and
 11 Education, the Kentucky Law Enforcement Council, and the Office of Insurance
 12 with a report detailing its findings on a cumulative basis. In accordance with KRS
 13 131.190, the Department of Revenue shall not identify or divulge the confidential
 14 tax information of any individual insurer in this report.

15 (5) The insurance premiums surcharge provided in this section shall not apply to
 16 premiums collected from the following:

- 17 (a) The federal government;
- 18 (b) Resident educational and charitable institutions qualifying under Section
 19 501(c)(3) of the Internal Revenue Code;
- 20 (c) Resident nonprofit religious institutions for real, tangible, and intangible
 21 property coverage only;
- 22 (d) State government for coverage of real property; or
- 23 (e) Local governments for coverage of real property.

24 ➔Section 2. KRS 138.195 is repealed and reenacted to read as follows:

- 25 (1) No person other than a manufacturer shall acquire cigarettes in this state on which
 26 the Kentucky cigarette tax has not been paid, nor act as a resident wholesaler,
 27 nonresident wholesaler, vending machine operator, sub-jobber, transporter or

1 unclassified acquirer of such cigarettes without first obtaining a license from the
2 department as set out in this section.

3 (2) Each resident wholesaler shall secure a separate license for each place of business at
4 which cigarette tax evidence is affixed or at which cigarettes on which the Kentucky
5 cigarette tax has not been paid are received. Each nonresident wholesaler shall
6 secure a separate license for each place of business at which evidence of Kentucky
7 cigarette tax is affixed or from where Kentucky cigarette tax is reported and paid.
8 Such a license or licenses shall be secured on or before July 1 of each year, and each
9 licensee shall pay the sum of five hundred dollars (\$500) for each such year or
10 portion thereof for which such license is secured.

11 (3) Each sub-jobber shall secure a separate license for each place of business from
12 which Kentucky tax-paid cigarettes are made available to retailers, whether such
13 place of business is located within or without this state. Such license or licenses
14 shall be secured on or before July 1 of each year, and each licensee shall pay the
15 sum of five hundred dollars (\$500) for each such year or portion thereof for which
16 such license is secured.

17 (4) Each vending machine operator shall secure a license for the privilege of dispensing
18 Kentucky tax-paid cigarettes by vending machines. Such license shall be secured on
19 or before July 1 of each year, and each licensee shall pay the sum of twenty-five
20 dollars (\$25) for each year or portion thereof for which such license is secured. No
21 vending machine shall be operated within this Commonwealth without having
22 prominently affixed thereto the name of its operator, together with the license
23 number assigned to such operator by the department. The department shall prescribe
24 by regulation the manner in which the information shall be affixed to the vending
25 machine.

26 (5) Each transporter shall secure a license for the privilege of transporting cigarettes
27 within this state. Such license shall be secured on or before July 1 of each year, and

1 each licensee shall pay the sum of fifty dollars (\$50) for each such year or portion
2 thereof for which such license is secured. No transporter shall transport any
3 cigarettes without having in actual possession an invoice or bill of lading therefor,
4 showing the name and address of the consignor and consignee, the date acquired by
5 the transporter, the name and address of the transporter, the quantity of cigarettes
6 being transported, together with the license number assigned to such transporter by
7 the department.

8 (6) Each unclassified acquirer shall secure a license for the privilege of acquiring
9 cigarettes on which the Kentucky cigarette tax has not been paid. Such license shall
10 be secured on or before July 1 of each year, and each licensee shall pay the sum of
11 fifty dollars (\$50) for each such year or portion thereof for which such license is
12 secured.

13 (7) Nothing in KRS 138.130 to 138.205 shall be construed to prevent the department
14 from requiring a person to purchase more than one (1) license if the nature of such
15 person's business is so diversified as to justify such requirement.

16 (8) The department may by regulation require any person licensed under the provisions
17 of this section to supply such information concerning his business, sales or any
18 privilege exercised, as is deemed reasonably necessary for the regulation of such
19 licensees, and to protect the revenues of the state. Failure on the part of such
20 licensee to comply with the provisions of KRS 138.130 to 138.205 or any
21 regulations promulgated thereunder, or to permit an inspection of premises,
22 machines or vehicles by an authorized agent of the department at any reasonable
23 time shall be grounds for the revocation of any license issued by the department,
24 after due notice and a hearing by the department. The commissioner of the
25 Department of Revenue may assign a time and place for such hearing and may
26 appoint a conferee who shall conduct a hearing, receive evidence and hear
27 arguments. Such conferee shall thereupon file a report with the commissioner

1 together with a recommendation as to the revocation of such license. From any
 2 revocation made by the commissioner of the Department of Revenue on such report,
 3 the licensee may prosecute an appeal to the Kentucky Board of Tax Appeals as
 4 provided by law. Any person whose license has been revoked for the willful
 5 violation of any provision of KRS 138.130 to 138.205 shall not be entitled to any
 6 license provided for in this section, or have any interest in any such license, either
 7 disclosed or undisclosed, either as an individual, partnership, corporation or
 8 otherwise, for a period of one (1) year after such revocation.

9 (9) No license issued pursuant to the provisions of this section shall be transferable or
 10 negotiable except that a license may be transferred between an individual and a
 11 corporation, if that individual is the exclusive owner of that corporation, or between
 12 a subsidiary corporation and its parent corporation.

13 (10) Every manufacturer located or doing business in this state and the first person to
 14 import cigarettes, other tobacco products, or snuff from a foreign manufacturer shall
 15 keep written records of all shipments of cigarettes, other tobacco products, or snuff
 16 to persons within this state, and shall submit to the department monthly reports of
 17 such shipments.

18 (11) No person licensed under this section except nonresident wholesalers shall either
 19 sell to or purchase from any other such licensee untax-paid cigarettes.

20 (12) Wholesalers of other tobacco products and snuff shall pay and report the tax levied
 21 by KRS 138.140(4) and (5) on or before the twentieth day of the calendar month
 22 following the month in which the possession or title of the other tobacco products
 23 or smokeless tobacco products are transferred from the wholesaler to retailers or
 24 consumers in this state. The Department of Revenue shall promulgate
 25 administrative regulations setting forth the details of the reporting requirements.

26 (13) A tax return shall be filed for each reporting period whether or not tax is due.

27 ➔Section 3. KRS 141.160 is repealed and reenacted to read as follows:

- 1 (1) All returns of income for the preceding taxable year shall be made by April 15 in
2 each year, except returns made on the basis of a fiscal year, which shall be made by
3 the fifteenth day of the fourth month following the close of the fiscal year. Blank
4 forms for returns of income shall be supplied by the department.
- 5 (2) Whenever, in the opinion of the department, it is necessary to examine the federal
6 income tax return or a copy thereof of any taxpayer in order to audit his return, the
7 department may compel the taxpayer to produce for inspection a copy of his federal
8 return and all statements and schedules in support thereof. The department may also
9 require copies of reports of adjustments made by the federal government.
- 10 (3) Notwithstanding subsection (1) of this section, all returns of income for the
11 preceding taxable year made by cooperatives as described in Sections 521 and 1381
12 of the Internal Revenue Code or by KRS Chapter 272 shall be made by September
13 15 in each year, except returns made on the basis of a fiscal year, which shall be
14 made by the fifteenth day of the ninth month following the close of the fiscal year.
- 15 ➔Section 4. KRS 160.6156 is repealed and reenacted to read as follows:
- 16 (1) Any utility service provider that has paid the utility gross receipts tax imposed by a
17 school district pursuant to KRS 160.613 and 160.614 may request a refund or credit
18 for any overpayment of tax or any payment where no tax was due within two (2)
19 years after the tax due date, including any extensions granted.
- 20 (2) A request for refund shall be in writing, and shall be made to the department with a
21 copy to the school district to which the tax was allocated. The request shall state the
22 amount requested, the applicable period, and the basis for the request.
- 23 (3) (a) Refunds shall be authorized by the department, in consultation with the
24 chairman or finance officer of the district board of education, with interest as
25 provided in KRS 131.183.
- 26 (b) Notwithstanding paragraph (a) of this subsection, a utility service provider
27 shall not be entitled to a refund or credit of the taxes paid under KRS 160.613

1 or 160.614 if the utility service provider has increased its rates in accordance
 2 with KRS 160.617, unless the utility service provider refunds or credits its
 3 related customers the amount of overpayment made to the department.

4 (4) The department shall make authorized tax refunds, including interest, from current
 5 tax collections in its possession allocated for distribution to the affected district.
 6 Applicable school district distributions and the department administrative expense
 7 allocation provided for pursuant to KRS 160.6154(2) shall be adjusted
 8 proportionately to reflect refunds paid. If sufficient funds are not available from the
 9 current distribution cycle, the department shall pay refunds from subsequent
 10 amounts collected for distribution to the affected district until all refund payments,
 11 including interest, have been completed.

12 (5) If the department denies a requested refund in whole or in part, the taxpayer may
 13 appeal the denial to the Circuit Court in the county where the school district is
 14 located.

15 ➔Section 5. KRS 160.6157 is repealed and reenacted to read as follows:

16 (1) The uniform penalty provisions of KRS 131.180 shall apply to all taxes levied by
 17 school districts pursuant to KRS 160.613 and 160.614.

18 (2) In addition to the penalties provided by KRS 131.180 and the taxes imposed under
 19 KRS 160.613 and 160.614, any utility service provider that erroneously bills
 20 customers after being notified of the error by the department shall be subject to a
 21 penalty of twenty-five dollars (\$25) per subsequent error, not to exceed ten
 22 thousand dollars (\$10,000) per month.

23 ➔Section 6. KRS 160.6158 is repealed and reenacted to read as follows:

24 (1) Notwithstanding any other provisions to the contrary, the commissioner of the
 25 department, in consultation with an impacted school district, shall waive any
 26 penalty, but not interest, where it is shown to the satisfaction of the department that
 27 the failure to file or pay timely is due to reasonable cause.

1 (2) The penalty imposed by KRS 160.6157(2) may be waived by the department based
2 on reasonable cause.

3 ➔Section 7. KRS 131.183 is repealed and reenacted to read as follows:

4 (1) (a) All taxes payable to the Commonwealth not paid at the time prescribed by
5 statute shall accrue interest at the tax interest rate.

6 (b) The tax interest rate shall be equal to the adjusted prime rate charged by banks
7 rounded to the nearest full percent as adjusted by subsection (2) of this
8 section.

9 (c) The commissioner of revenue shall adjust the tax interest rate not later than
10 November 15 of each year if the adjusted prime rate charged by banks during
11 October of that year, rounded to the nearest full percent, is at least one (1)
12 percentage point more or less than the tax interest rate which is then in effect.
13 The adjusted tax interest rate shall become effective on January 1 of the
14 immediately succeeding year.

15 (2) (a) 1. All taxes payable to the Commonwealth that have not been paid at the
16 time prescribed by statute shall accrue interest at the tax interest rate as
17 determined in accordance with subsection (1) of this section until May 1,
18 2008.

19 2. Beginning on May 1, 2008, all taxes payable to the Commonwealth that
20 have not been paid at the time prescribed by statute shall accrue interest
21 at the tax interest rate as determined in accordance with subsection (1) of
22 this section plus two percent (2%).

23 (b) 1. Interest shall be allowed and paid upon any overpayment as defined in
24 KRS 134.580 in respect of any of the taxes provided for in Chapters
25 131, 132, 134, 136, 137, 138, 139, 140, 141, 142, 143, 143A, and 243 of
26 the Kentucky Revised Statutes and KRS 160.613 and 160.614 at the rate
27 provided in subsection (1) of this section until May 1, 2008.

1 2. Beginning on May 1, 2008, interest shall be allowed and paid upon any
2 overpayment as defined in KRS 134.580 at the rate provided in
3 subsection (1) of this section minus two percent (2%).

4 3. Effective for refunds issued after April 24, 2008, except for the
5 provisions of KRS 138.351, 141.044(2), 141.235(3), and subsection (3)
6 of this section, interest authorized under this subsection shall begin to
7 accrue sixty (60) days after the latest of:

- 8 a. The due date of the return;
- 9 b. The date the return was filed;
- 10 c. The date the tax was paid;
- 11 d. The last day prescribed by law for filing the return; or
- 12 e. The date an amended return claiming a refund is filed.

13 (c) In no case shall interest be paid in an amount less than five dollars (\$5).

14 (3) Effective for refund claims filed on or after July 15, 1992, if any overpayment of the
15 tax imposed under KRS Chapter 141 results from a carryback of a net operating loss
16 or a net capital loss, the overpayment shall be deemed to have been made on the
17 date the claim for refund was filed. Interest authorized under subsection (2) of this
18 section shall begin to accrue ninety (90) days from the date the claim for refund was
19 filed.

20 (4) No interest shall be allowed or paid on any sales tax refund as provided by KRS
21 139.536.

22 ➔Section 8. KRS 141.044 is repealed and reenacted to read as follows:

23 (1) The estimated tax provided for in KRS 141.042 shall be paid as follows:

24 (a) If the declaration is filed on or before June 15 of the taxable year, the
25 estimated tax shall be paid in three (3) installments. The first installment, in
26 an amount equal to fifty percent (50%) of the estimated tax, shall be paid at
27 the time of the filing of the declaration. The second and third installments,

1 each in an amount equal to twenty-five percent (25%) of the estimated tax,
 2 shall be paid on September 15 and December 15, respectively, of the taxable
 3 year;

4 (b) If the declaration is filed after June 15 and not after September 15 of the
 5 taxable year and is not required by KRS 141.042 to be filed on or before June
 6 15 of the taxable year, the estimated tax shall be paid in two (2) installments.
 7 The first installment, in an amount equal to seventy-five percent (75%) of the
 8 estimated tax, shall be paid at the time of the filing of the declaration and the
 9 second installment, in an amount equal to twenty-five percent (25%) of the
 10 estimated tax, on December 15 of the taxable year;

11 (c) If the declaration is filed after September 15 of the taxable year and is not
 12 required to be filed on or before September 15 of the taxable year, the
 13 estimated tax shall be paid in full at the time of the filing of the declaration;

14 (d) If the declaration is filed after the time prescribed in KRS 141.042, including
 15 cases where extensions of time have been granted, paragraphs (a), (b), and (c)
 16 of this subsection shall not apply, and there shall be paid at the time of such
 17 filing all installments of estimated tax which would have been payable on or
 18 before such time if the declaration had been filed within the time prescribed in
 19 KRS 141.042, and the remaining installments shall be paid at the times at
 20 which, and in the amounts in which, they would have been payable if the
 21 declaration had been so filed.

22 (2) (a) A refund of taxes collected pursuant to KRS 141.042 shall include interest at
 23 the tax interest rate as defined in KRS 131.010(6).

24 (b) Effective for refunds issued after April 24, 2008, the interest shall not begin to
 25 accrue until ninety (90) days after the latest of:

- 26 1. The due date of the return;
- 27 2. The date the return was filed;

1 3. The date the tax was paid;

2 4. The last day prescribed by law for filing the return, or

3 5. The date an amended return claiming a refund is filed.

4 (3) (a) Overpayment as defined in KRS 134.580 resulting from the payment of
5 estimated tax in excess of the amount determined to be due upon the filing of
6 a return for the same taxable year may be credited against the amount of
7 estimated tax determined to be due on any declaration filed for the next
8 succeeding taxable year or for any deficiency or nonpayment of tax for any
9 previous taxable year;

10 (b) No refund shall be made of any estimated tax paid unless a complete return is
11 filed as required by this chapter.

12 (4) At the election of the taxpayer, any installment of the estimated tax may be paid
13 prior to the date prescribed for its payment.

14 (5) In the application of this section and KRS 141.042 for a taxable year beginning on
15 any date other than January 1, there shall be substituted for the months specified in
16 this section and KRS 141.042 the relative months and dates which correspond to
17 that taxable year.

18 ➔Section 9. KRS 141.235 is repealed and reenacted to read as follows:

19 (1) No suit shall be maintained in any court to restrain or delay the collection or
20 payment of the tax levied by this chapter.

21 (2) Any tax collected pursuant to the provisions of this chapter may be refunded or
22 credited in accordance with the provisions of KRS 134.580, except that:

23 (a) In any case where the assessment period contained in KRS 141.210 has been
24 extended by an agreement between the taxpayer and the department, the
25 limitation contained in this subsection shall be extended accordingly.

26 (b) If the claim for refund or credit relates directly to adjustments resulting from a
27 federal audit, the taxpayer shall file a claim for refund or credit within the time

1 provided for in this subsection or six (6) months from the conclusion of the
 2 federal audit, whichever is later.

3 (c) If the claim for refund or credit relates to an overpayment attributable to a net
 4 operating loss carryback or capital loss carryback, resulting from a loss which
 5 occurs in a taxable year beginning after December 31, 1993, the claim for
 6 refund or credit shall be filed within the times prescribed in this subsection for
 7 the taxable year of the net operating loss or capital loss which results in the
 8 carryback.

9 For the purposes of this subsection and subsection (3) of this section, a return filed
 10 before the last day prescribed by law for filing the return shall be considered as filed
 11 on the last day.

12 (3) Overpayments as defined in KRS 134.580 of taxes collected pursuant to KRS
 13 141.300, 141.310, or 141.315 shall be refunded or credited with interest at the tax
 14 interest rate as defined in KRS 131.010(6). Effective for refunds issued after April
 15 24, 2008, the interest shall not begin to accrue until ninety (90) days after the latest
 16 of:

- 17 (a) The due date of the return;
- 18 (b) The date the return was filed;
- 19 (c) The date the tax was paid;
- 20 (d) The last day prescribed by law for filing the return; or
- 21 (e) The date an amended return claiming a refund is filed.

22 (4) Exclusive authority to refund or credit overpayments of taxes collected pursuant to
 23 this chapter is vested in the commissioner or his authorized agent. Amounts directed
 24 to be refunded shall be paid out of the general fund.

25 ➔Section 10. KRS 134.580 is repealed and reenacted to read as follows:

26 (1) As used in this section, unless the context requires otherwise:

27 (a) "Agency" means the agency of state government which administers the tax to

1 be refunded or credited.

2 (b) "Overpayment" or "payment where no tax was due" means the excess of the
3 tax payments made over the correct tax liability determined under the terms of
4 the applicable statute without reference to the constitutionality of the statute.

5 (2) When money has been paid into the State Treasury in payment of any state taxes,
6 except ad valorem taxes, whether payment was made voluntarily or involuntarily,
7 the appropriate agency shall authorize refunds to the person who paid the tax, or to
8 his heirs, personal representatives or assigns, of any overpayment of tax and any
9 payment where no tax was due. When a bona fide controversy exists between the
10 agency and the taxpayer as to the liability of the taxpayer for the payment of tax
11 claimed to be due by the agency, the taxpayer may pay the amount claimed by the
12 agency to be due, and if an appeal is taken by the taxpayer from the ruling of the
13 agency within the time provided by KRS 131.340 and it is finally adjudged that the
14 taxpayer was not liable for the payment of the tax or any part thereof, the agency
15 shall authorize the refund or credit as the Kentucky Board of Tax Appeals or courts
16 may direct.

17 (3) No refund shall be made unless each taxpayer individually files an application or
18 claim for the refund within four (4) years from the date payment was made. Each
19 claim or application for a refund shall be in writing and state the specific grounds
20 upon which it is based. Denials of refund claims or applications may be protested
21 and appealed in accordance with KRS 131.110 and 131.340.

22 (4) Refunds shall be authorized with interest as provided in KRS 131.183. The refunds
23 authorized by this section shall be made in the same manner as other claims on the
24 State Treasury are paid. They shall not be charged against any appropriation, but
25 shall be deducted from tax receipts for the current fiscal year.

26 (5) Nothing in this section shall be construed to authorize the agency to make or cause
27 to be made any refund except within four (4) years of the date prescribed by law for

1 the filing of a return including any extension of time for filing the return, or the date
 2 the money was paid into the State Treasury, whichever is the later, except in any
 3 case where the assessment period has been extended by written agreement between
 4 the taxpayer and the department, the limitation contained in this subsection shall be
 5 extended accordingly. Nothing in this section shall be construed as requiring the
 6 agency to authorize any refund to a taxpayer without demand from the taxpayer, if
 7 in the opinion of the agency the cost to the state of authorizing the refund would be
 8 greater than the amount that should be refunded or credited.

9 (6) This section shall not apply to any case in which the statute may be held
 10 unconstitutional, either in whole or in part.

11 (7) In cases in which a statute has been held unconstitutional, taxes paid thereunder
 12 may be refunded to the extent provided by KRS 134.590, and by the statute held
 13 unconstitutional.

14 (8) No person shall secure a refund of motor fuels tax under KRS 134.580 unless the
 15 person holds an unrevoked refund permit issued by the department before the
 16 purchase of gasoline or special fuels and that permit entitles the person to apply for
 17 a refund under KRS 138.344 to 138.355.

18 (9) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary:

19 (a) The Commonwealth hereby revokes and withdraws its consent to suit in any
 20 forum whatsoever on any claim for recovery, refund, or credit of any tax
 21 overpayment for any taxable year ending before December 31, 1995, made by
 22 an amended return or any other method after December 22, 1994, and based
 23 on a change from any initially filed separate return or returns to a combined
 24 return under the unitary business concept or to a consolidated return. No such
 25 claim shall be effective or recognized for any purpose.

26 (b) Any stated or implied consent for the Commonwealth of Kentucky, or any
 27 agent or officer of the Commonwealth of Kentucky, to be sued by any person

for any legal, equitable, or other relief with respect to any claim for recovery, refund, or credit of any tax overpayment for any taxable year ending before December 31, 1995, made by an amended return or any other method after December 22, 1994, and based on a change from any initially filed separate return or returns to a combined return under the unitary business concept or to a consolidated return, is hereby withdrawn.

(c) The provisions of this subsection shall apply retroactively for all taxable years ending before December 31, 1995, and shall apply to all claims for such taxable years pending in any judicial or administrative forum.

(10) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary:

(a) No money shall be drawn from the State Treasury for the payment of any claim for recovery, refund, or credit of any tax overpayment for any taxable year ending before December 31, 1995, made by an amended return or any other method after December 22, 1994, and based on a change from any initially filed separate return or returns to a combined return under the unitary business concept or to a consolidated return.

(b) No provision of the Kentucky Revised Statutes shall constitute an appropriation or mandated appropriation for the payment of any claim for recovery, refund, or credit of any tax overpayment for any taxable year ending before December 31, 1995, made by an amended return or any other method after December 22, 1994, and based on a change from any initially filed separate return or returns to a combined return under the unitary business concept or to a consolidated return.

➔Section 11. KRS 393.060 is repealed and reenacted to read as follows:

The following property held or owing by a banking or financial organization is presumed abandoned:

(1) Any deposit (legal, beneficial, equitable, or otherwise), whether payable on demand

1 or a time deposit, including a deposit that is automatically renewable, in any bank or
2 trust company in this state, together with the interest thereon and less any
3 deductions permissible under state or federal law including but not limited to
4 dormancy fees and service charges, unless the owner has within three (3) years or
5 within three (3) years of the first date of maturity, in the instance of a time deposit:

6 (a) Communicated in writing or by other means, reflected in a contemporaneous
7 record prepared by or on behalf of the bank or trust company, with the bank or
8 trust company concerning it;

9 (b) Been credited with interest on his request or by his action;

10 (c) Had a transfer, disposition of interest, or other transaction noted of record in
11 the books or records of the bank or trust company;

12 (d) Increased or decreased the amount of the deposit; or

13 (e) Has not received a regularly mailed statement of account or other notification
14 or communication, mailed by the bank or trust company. Mailings shall be
15 considered not received if returned to the bank or trust company marked
16 undeliverable by the United States Postal Service or other provider of delivery
17 services. A mailing shall be considered regularly mailed if it is of the type sent
18 to all owners of a certain category of deposit and is mailed no less than
19 annually;

20 (2) Any sum payable on checks certified in this state or on written instruments issued in
21 this state on which a banking or financial organization or business association is
22 directly liable, including, by way of illustration but not of limitation, certificates of
23 deposit, drafts, money orders, and traveler's checks, that with the exception of
24 traveler's checks has been outstanding for more than three (3) years from the date it
25 was payable, or from the date of its issuance if payable on demand, or, in the case of
26 traveler's checks that has been outstanding for more than seven (7) years from the
27 date of its issuance unless the owner has within three (3) years or within seven (7)

1 years in the case of traveler's checks corresponded in writing with the banking or
 2 financial organization concerning it, or otherwise indicated an interest as evidenced
 3 by a memorandum on file with the banking or financial organization;

- 4 (3) Any funds or other personal property, tangible or intangible, removed from a safe
 5 deposit box or any other safekeeping repository or agency or collateral deposit box
 6 in this state on which the lease or rental period has expired due to nonpayment of
 7 rental charges or other reason, or any surplus amounts arising from the sale thereof
 8 pursuant to law, that have been unclaimed by the owner for more than three (3)
 9 years from the date on which the lease or rental period expired.

10 ➔Section 12. KRS 157.621 is repealed and reenacted to read as follows:

- 11 (1) In addition to the levy required by KRS 157.440(1)(b) to participate in the Facilities
 12 Support Program of Kentucky, local school districts that have made the levy
 13 required by KRS 157.440(1)(b) are authorized to levy the following additional
 14 equivalent rates to support debt service, new facilities, or major renovations of
 15 existing school facilities, which levies shall not be subject to recall under any
 16 provision of the Kentucky Revised Statutes, or to voter approval under the
 17 provisions of KRS 157.440(2):

18 (a) 1. Prior to April 24, 2008, local school districts that have experienced
 19 student population growth during a five (5) year period may levy an
 20 additional five cents (\$0.05) equivalent rate for debt service and new
 21 facilities. The tax rate levied by the district under this provision shall not
 22 be equalized by state funding, except as provided in paragraph (b) of this
 23 subsection. Any levy imposed under this paragraph prior to April 24,
 24 2008, by a local school district shall continue until removed by the local
 25 school district.

26 2. A local school district shall meet the following criteria in order to levy
 27 the tax provided in subparagraph 1. of this paragraph:

- 1 a. Growth of at least one hundred fifty (150) students in average daily
- 2 attendance and three percent (3%) overall growth for the five (5)
- 3 preceding years;
- 4 b. Bonded debt to the maximum capability of at least eighty percent
- 5 (80%) of capital outlay from the Support Education Excellence in
- 6 Kentucky funding program, all revenue from the local facility tax,
- 7 and all receipts from state equalization on the local facility tax;
- 8 c. Current student enrollment in excess of available classroom space;
- 9 and
- 10 d. A local school facility plan that has been approved by the
- 11 Kentucky Board of Education and certified to the School Facilities
- 12 Construction Commission.

13 (b) 1. In addition to the levy authorized by paragraph (a) of this subsection, a

14 local school district may levy an additional five cents (\$0.05) equivalent

15 rate under the same terms and conditions established by paragraph (a) of

16 this subsection beginning in fiscal year 2003-2004 if the levy was made

17 prior to April 24, 2008, and if the local school district:

- 18 a. Levied the five cents (\$0.05) equivalent rate authorized by
- 19 paragraph (a) of this subsection; and
- 20 b. Still meets the requirements established by paragraph (a)2. of this
- 21 subsection.

22 2. Any school district that imposes both the levy authorized by paragraph

23 (a) of this subsection and the additional levy authorized by subparagraph

24 1. of this paragraph shall receive equalization funding from the state for

25 the levy imposed by paragraph (a) of this subsection beginning in fiscal

26 year 2003-2004. Equalization shall be provided at one hundred fifty

27 percent (150%) of the statewide average per pupil assessment, subject to

the provision of funding by the General Assembly. Equalization funds shall be used as provided in KRS 157.440(1)(b).

3. Any levy imposed under this paragraph prior to April 24, 2008, by a local school district shall continue until removed by the local school district.

- (c) 1. A local school district that meets the following conditions may levy an additional five cents (\$0.05) equivalent rate on and after April 24, 2008:

- a. The local school district is located in a county that will have more students as a direct result of the new mission established for Fort Knox by the Base Realignment and Closure (BRAC) 2005 issued by the United States Department of Defense pursuant to the Defense Base Closure and Realignment Act of 1990, Pub. L. No. 100-526, Part A of Title XXIX of 104 Stat. 1808, 10 U.S.C. sec. 2687 note; and

- b. The commissioner of education has determined, based upon the presentation of credible data, that the projected increased number of students is sufficient to require new facilities or the major renovation of existing facilities to accommodate the new students, and has approved the imposition of the additional levy.

2. Any local school district that imposes both the levy authorized by paragraph (a) of this subsection and the additional levy authorized by subparagraph 1. of this paragraph, and that has not received equalization funding under subsection (2) or (3) of this section, shall receive equalization funding from the state for the levy imposed by paragraph (a) of this subsection beginning in the fiscal year following the fiscal year in which the levy authorized by subparagraph 1. of this paragraph is imposed. Equalization shall be provided at one hundred fifty percent

1 (150%) of the statewide average per pupil assessment, subject to the
 2 provision of funding by the General Assembly. Equalization funds shall
 3 be used as provided in KRS 157.440(1)(b).

4 3. Any levy imposed under this paragraph by a local school district shall
 5 continue until removed by the local school district.

6 (2) Any local school district that, prior to April 24, 2008, levied an equivalent rate that:

7 (a) Was subject to recall at the time it was levied; and

8 (b) Included a rate of at least five cents (\$0.05) equivalent rate for the purpose of
 9 debt service for school construction or major renovation of existing school
 10 facilities;

11 shall be eligible for retroactive equalization from the state for that levy at one
 12 hundred fifty percent (150%) of the statewide average per pupil assessment
 13 beginning in fiscal year 2003-2004, subject to the provision of funding by the
 14 General Assembly. Equalization funds shall be used as provided in KRS
 15 157.440(1)(b).

16 (3) Any local school district that:

17 (a) Levied an equivalent tax rate as of April 24, 2008, that included at least ten
 18 cents (\$0.10) that was devoted to building purposes, or that had debt service
 19 corresponding to a ten cents (\$0.10) equivalent rate;

20 (b) Did not receive equalized growth funding pursuant to subsection (1)(b)2. of
 21 this section; and

22 (c) Has been approved by the commissioner of education;

23 shall be eligible for equalization from the state for that levy at one hundred fifty
 24 percent (150%) of the statewide average per pupil assessment beginning in fiscal
 25 year 2005-2006, subject to the provision of funding by the General Assembly.
 26 Equalization funds shall be used as provided in KRS 157.440(1)(b). Equalization
 27 funds shall be available to a local school district pursuant to this subsection until the

1 earlier of June 30, 2025, or the date the bonds for the local school district supported
2 by this equalization funding are retired.

3 (4) (a) Notwithstanding any other provision of this section, any local school district
4 receiving equalization funding on April 24, 2008, related to an equivalent rate
5 levy described in subsection (1), (2), or (3) of this section shall continue to
6 receive the equalization funding related to the applicable equivalent rate levy,
7 subject to the limitations established by subsections (1), (2), and (3) of this
8 section, and subject to the provision of funding by the General Assembly,
9 until amended by subsequent action of the General Assembly. A local school
10 district described in this paragraph shall not be eligible to receive equalization
11 for any additional equivalent rate levies made by it on or after April 24, 2008.

12 (b) Notwithstanding any other provision of this section, any local school district
13 that has imposed an equivalent rate levy described in subsection (1)(a) or (b)
14 or (2) of this section as of April 24, 2008, that qualifies for equalization but
15 that has not yet received equalization funding shall be eligible for equalization
16 funding as provided in subsection (1)(a) or (b) or (2) of this section, subject to
17 the provision of funding by the General Assembly.

18 (c) On and after April 24, 2008, a local school district not included in paragraph
19 (a) or (b) of this subsection shall be prohibited from imposing an equivalent
20 rate levy under the provisions of subsection (1)(a) or (b) of this section, and
21 shall not be eligible for equalization funding under the provisions of this
22 section.

23 (d) On and after April 24, 2008, a local school district meeting the requirements
24 of subsection (1)(c) of this section may impose the levy authorized by
25 subsection (1)(c) of this section, and shall qualify for equalization as provided
26 in subsection (1)(c) of this section, subject to the provision of funding by the
27 General Assembly.

1 ➔ Section 13. KRS 139.010 is amended to read as follows:

2 As used in this chapter, unless the context otherwise provides:

3 (1) "Business" includes any activity engaged in by any person or caused to be engaged
4 in by that person with the object of gain, benefit or advantage, either direct or
5 indirect;

6 (2) "Commonwealth" means the Commonwealth of Kentucky;

7 (3) "Department" means the Department of Revenue;

8 (4) (a) "Gross receipts" and "sales price" mean the total amount or consideration,
9 including cash, credit, property, and services, for which tangible personal
10 property or services are sold, leased, or rented, valued in money, whether
11 received in money or otherwise, without any deduction for any of the
12 following:

- 13 1. The retailer's cost of the property sold;
- 14 2. The cost of the materials used, labor or service cost, interest, losses, all
15 costs of transportation to the retailer, all taxes imposed on the retailer, or
16 any other expense of the retailer;
- 17 3. Charges by the retailer for any services necessary to complete the sale;
- 18 4. Delivery charges, which are defined as charges by the retailer for the
19 preparation and delivery to a location designated by the purchaser
20 including transportation, shipping, postage, handling, crating, and
21 packing; and
- 22 5. Any amount for which credit is given to the purchaser by the retailer,
23 other than credit for property traded when the property traded is of like
24 kind and character to the property purchased and the property traded is
25 held by the retailer for resale.

26 (b) "Gross receipts" and "sales price" shall include consideration received by the
27 retailer from a third party if:

- 1 1. The retailer actually receives consideration from a third party and the
2 consideration is directly related to a price reduction or discount on the
3 sale to the purchaser;
- 4 2. The retailer has an obligation to pass the price reduction or discount
5 through to the purchaser;
- 6 3. The amount of consideration attributable to the sale is fixed and
7 determinable by the retailer at the time of the sale of the item to the
8 purchaser; and
- 9 4. One (1) of the following criteria is met:
 - 10 a. The purchaser presents a coupon, certificate, or other
11 documentation to the retailer to claim a price reduction or discount
12 where the coupon, certificate, or documentation is authorized,
13 distributed, or granted by a third party with the understanding that
14 the third party will reimburse any seller to whom the coupon,
15 certificate, or documentation is presented;
 - 16 b. The price reduction or discount is identified as a third-party price
17 reduction or discount on the invoice received by the purchaser or
18 on a coupon, certificate, or other documentation presented by the
19 purchaser; or
 - 20 c. The purchaser identifies himself or herself to the retailer as a
21 member of a group or organization entitled to a price reduction or
22 discount. A "preferred customer" card that is available to any
23 patron does not constitute membership in such a group.
- 24 (c) "Gross receipts" and "sales price" shall not include:
 - 25 1. Discounts, including cash, term, or coupons that are not reimbursed by a
26 third party and that are allowed by a retailer and taken by a purchaser on
27 a sale;

- 1 2. Interest, financing, and carrying charges from credit extended on the sale
- 2 of tangible personal property or services, if the amount is separately
- 3 stated on the invoice, bill of sale, or similar document given to the
- 4 purchaser;
- 5 3. Any taxes legally imposed directly on the purchaser that are separately
- 6 stated on the invoice, bill of sale, or similar document given to the
- 7 purchaser; or
- 8 4. The amount charged for labor or services rendered in installing or
- 9 applying the property or service sold, provided the amount charged is
- 10 separately stated on the invoice, bill of sale, or similar document given
- 11 to the purchaser.
- 12 (d) As used in this subsection, "third party" means a person other than the
- 13 purchaser;
- 14 (5) "In this state" or "in the state" means within the exterior limits of the
- 15 Commonwealth and includes all territory within these limits owned by or ceded to
- 16 the United States of America;
- 17 (6) (a) "Lease or rental" means any transfer of possession or control of tangible
- 18 personal property for a fixed or indeterminate term for consideration. A lease
- 19 or rental shall include future options to purchase the property or extend the
- 20 terms of the agreement and agreements covering trailers where the amount of
- 21 consideration may be increased or decreased by reference to the amount
- 22 realized upon sale or disposition of the property as defined in 26 U.S.C. sec.
- 23 7701(h)(1).
- 24 (b) "Lease or rental" shall not include:
- 25 1. A transfer of possession or control of property under a security
- 26 agreement or deferred payment plan that requires the transfer of title
- 27 upon completion of the required payments;

- 1 2. A transfer of possession or control of property under an agreement that
- 2 requires the transfer of title upon completion of the required payments
- 3 and payment of an option price that does not exceed the greater of one
- 4 hundred dollars (\$100) or one percent (1%) of the total required
- 5 payments; or
- 6 3. Providing tangible personal property and an operator for the tangible
- 7 personal property for a fixed or indeterminate period of time. To qualify
- 8 for this exclusion, the operator must be necessary for the equipment to
- 9 perform as designed, and the operator must do more than maintain,
- 10 inspect, or setup the tangible personal property.
- 11 (c) This definition shall apply regardless of the classification of a transaction
- 12 under generally accepted accounting principles, the Internal Revenue Code, or
- 13 other provisions of federal, state, or local law;
- 14 (7) (a) "Machinery for new and expanded industry" means machinery:
- 15 1. Used directly in a manufacturing or processing production process;
- 16 2. Which is incorporated for the first time into a plant facility established
- 17 in this state; and
- 18 3. Which does not replace machinery in the plant facility unless that
- 19 machinery purchased to replace existing machinery:
- 20 a. Increases the consumption of recycled materials at the plant
- 21 facility by not less than ten percent (10%);
- 22 b. Performs different functions;
- 23 c. Is used to manufacture a different product; or
- 24 d. Has a greater productive capacity, as measured in units of
- 25 production, than the machinery being replaced.
- 26 (b) The term "machinery for new and expanded industry" does not include repair,
- 27 replacement, or spare parts of any kind regardless of whether the purchase of

1 repair, replacement, or spare parts is required by the manufacturer or vendor
2 as a condition of sale or as a condition of warranty.

3 (c) The term "processing production" shall include the processing and packaging
4 of raw materials, in-process materials, and finished products; the processing
5 and packaging of farm and dairy products for sale; and the extraction of
6 minerals, ores, coal, clay, stone, and natural gas;

7 (8) "Manufacturing" means any process through which material having little or no
8 commercial value for its intended use before processing has appreciable commercial
9 value for its intended use after processing by the machinery. The manufacturing or
10 processing production process commences with the movement of raw materials
11 from storage into a continuous, unbroken, integrated process and ends when the
12 product being manufactured is packaged and ready for sale;

13 (9) (a) "Occasional sale" includes:

14 1. A sale of property not held or used by a seller in the course of an activity
15 for which he or she is required to hold a seller's permit, provided such
16 sale is not one (1) of a series of sales sufficient in number, scope, and
17 character to constitute an activity requiring the holding of a seller's
18 permit. In the case of the sale of the entire, or a substantial portion of the
19 nonretail assets of the seller, the number of previous sales of similar
20 assets shall be disregarded in determining whether or not the current sale
21 or sales shall qualify as an occasional sale; or

22 2. Any transfer of all or substantially all the property held or used by a
23 person in the course of such an activity when after such transfer the real
24 or ultimate ownership of such property is substantially similar to that
25 which existed before such transfer.

26 (b) For the purposes of this subsection, stockholders, bondholders, partners, or
27 other persons holding an interest in a corporation or other entity are regarded

1 as having the "real or ultimate ownership" of the property of such corporation
2 or other entity;

3 (10) "Person" includes any individual, firm, copartnership, joint venture, association,
4 social club, fraternal organization, corporation, estate, trust, business trust, receiver,
5 trustee, syndicate, cooperative, assignee, governmental unit or agency, or any other
6 group or combination acting as a unit;

7 (11) "Plant facility" means a single location that is exclusively dedicated to
8 manufacturing or processing production activities. For purposes of this section, a
9 location shall be deemed to be exclusively dedicated to manufacturing activities
10 even if retail sales are made there, provided that the retail sales are incidental to the
11 manufacturing activities occurring at the location. The term "plant facility" shall not
12 include any restaurant, grocery store, shopping center, or other retail establishment;

13 (12) "Prewritten computer software" means:

14 (a) Computer software, including prewritten upgrades, that are not designed and
15 developed by the author or other creator to the specifications of a specific
16 purchaser. The combining of two (2) or more prewritten computer software
17 programs or portions thereof does not cause the combination to be other than
18 prewritten computer software;

19 (b) Software designed and developed by the author or other creator to the
20 specifications of a specific purchaser when it is sold to a person other than the
21 original purchaser; or

22 (c) Any portion of prewritten computer software that is modified or enhanced in
23 any manner, where the modification or enhancement is designed and
24 developed to the specifications of a specific purchaser. When a person
25 modifies or enhances computer software of which the person is not the author
26 or creator, the person shall be deemed to be the author or creator only of the
27 modifications or enhancements the person actually made. In the case of

1 modified or enhanced prewritten software, if there is a reasonable, separately
 2 stated charge on an invoice or other statement of the price to the purchaser for
 3 the modification or enhancement, then the modification or enhancement shall
 4 not constitute prewritten computer software;

5 (13) "Purchase" means any transfer of title or possession, exchange, barter, lease, or
 6 rental, conditional or otherwise, in any manner or by any means whatsoever, of
 7 tangible personal property for a consideration and includes:

8 (a) When performed outside this state or when the customer gives a resale
 9 certificate, the producing, fabricating, processing, printing, or imprinting of
 10 tangible personal property for a consideration for consumers who furnish
 11 either directly or indirectly the materials used in the producing, fabricating,
 12 processing, printing, or imprinting;

13 (b) A transaction whereby the possession of property is transferred but the seller
 14 retains the title as security for the payment of the price; and

15 (c) A transfer for a consideration of the title or possession of tangible personal
 16 property which has been produced, fabricated, or printed to the special order
 17 of the customer, or of any publication;

18 (14) "Recycled materials" means materials which have been recovered or diverted from
 19 the solid waste stream and reused or returned to use in the form of raw materials or
 20 products;

21 (15) "Recycling purposes" means those activities undertaken in which materials that
 22 would otherwise become solid waste are collected, separated, or processed in order
 23 to be reused or returned to use in the form of raw materials or products;

24 (16) (a) "Repair, replacement, or spare parts" means any tangible personal property
 25 used to maintain, restore, mend, or repair machinery or equipment.

26 (b) "Repair, replacement, or spare parts" does not include machine oils, grease, or
 27 industrial tools;

1 (17) (a) "Retailer" means:

- 2 1. Every person engaged in the business of making retail sales or
3 furnishing any services included in KRS 139.200;
- 4 2. Every person engaged in the business of making sales at auction of
5 tangible personal property owned by the person or others for storage, use
6 or other consumption except as provided in paragraph (c) of this
7 subsection;
- 8 3. Every person making more than two (2) retail sales during any twelve
9 (12) month period, including sales made in the capacity of assignee for
10 the benefit of creditors, or receiver or trustee in bankruptcy;
- 11 4. Any person conducting a race meeting under the provision of KRS
12 Chapter 230, with respect to horses which are claimed during the
13 meeting.

14 (b) When the department determines that it is necessary for the efficient
15 administration of this chapter to regard any salesmen, representatives,
16 peddlers, or canvassers as the agents of the dealers, distributors, supervisors or
17 employers under whom they operate or from whom they obtain the tangible
18 personal property sold by them, irrespective of whether they are making sales
19 on their own behalf or on behalf of the dealers, distributors, supervisors or
20 employers, the department may so regard them and may regard the dealers,
21 distributors, supervisors or employers as retailers for purposes of this chapter;

22 (c) 1. Any person making sales at a charitable auction for a qualifying entity
23 shall not be a retailer for purposes of the sales made at the charitable
24 auction if:
25 a. The qualifying entity, not the person making sales at the auction,
26 is sponsoring the auction;
27 b. The purchaser of tangible personal property at the auction

1 directly pays the qualifying entity sponsoring the auction for the
 2 property and not the person making the sales at the auction; and
 3 c. The qualifying entity, not the person making sales at the auction,
 4 is responsible for the collection, control, and disbursement of the
 5 auction proceeds.

6 2. If the conditions set forth in subparagraph 1. of this paragraph are
 7 met, the qualifying entity sponsoring the auction shall be the retailer
 8 for purposes of the sales made at the charitable auction.

9 3. For purposes of this paragraph, "qualifying entity" means a resident:
 10 a. Church;
 11 b. School;
 12 c. Civic club; or
 13 d. Any other nonprofit charitable, religious, or educational
 14 organization;

15 (18) "Retail sale" means any sale, lease, or rental for any purpose other than resale,
 16 sublease, or subrent in the regular course of business of tangible personal property;

17 (19) (a) "Sale" means the furnishing of any services included in KRS 139.200 and any
 18 transfer of title or possession, exchange, barter, lease, or rental, conditional or
 19 otherwise, in any manner or by any means whatsoever, of tangible personal
 20 property for a consideration and includes:

- 21 1. The producing, fabricating, processing, printing, or imprinting of
 22 tangible personal property for a consideration for purchasers who
 23 furnish, either directly or indirectly, the materials used in the producing,
 24 fabricating, processing, printing, or imprinting;
- 25 2. A transaction whereby the possession of property is transferred, but the
 26 seller retains the title as security for the payment of the price; and
- 27 3. A transfer for a consideration of the title or possession of tangible

1 personal property which has been produced, fabricated, or printed to the
2 special order of the purchaser.

3 (b) This definition shall apply regardless of the classification of a transaction
4 under generally accepted accounting principles, the Internal Revenue Code, or
5 other provisions of federal, state, or local law;

6 (20) "Seller" includes every person engaged in the business of selling tangible personal
7 property or services of a kind, the gross receipts from the retail sale of which are
8 required to be included in the measure of the sales tax, and every person engaged in
9 making sales for resale;

10 (21) (a) "Storage" includes any keeping or retention in this state for any purpose
11 except sale in the regular course of business or subsequent use solely outside
12 this state of tangible personal property purchased from a retailer.

13 (b) "Storage" does not include the keeping, retaining, or exercising any right or
14 power over tangible personal property for the purpose of subsequently
15 transporting it outside the state for use thereafter solely outside the state, or for
16 the purpose of being processed, fabricated, or manufactured into, attached to,
17 or incorporated into, other tangible personal property to be transported outside
18 the state and thereafter used solely outside the state;

19 (22) "Tangible personal property" means personal property which may be seen, weighed,
20 measured, felt, or touched, or which is in any other manner perceptible to the
21 senses, regardless of the method of delivery, and includes natural, artificial, and
22 mixed gas, electricity, water, steam, and prewritten computer software;

23 (23) "Taxpayer" means any person liable for tax under this chapter; and

24 (24) (a) "Use" includes the exercise of any right or power over tangible personal
25 property incident to the ownership of that property, or by any transaction in
26 which possession is given, except that it does not include the sale of that
27 property in the regular course of business.

1 (b) "Use" does not include the keeping, retaining, or exercising any right or power
 2 over tangible personal property for the purpose of subsequently transporting it
 3 outside the state for use thereafter solely outside the state, or for the purpose
 4 of being processed, fabricated, or manufactured into, attached to, or
 5 incorporated into, other tangible personal property to be transported outside
 6 the state and thereafter used solely outside the state.

7 ➔Section 14. Notwithstanding KRS 393.125, unclaimed securities held by the
 8 Department of the Treasury may be sold with the receipts, net of estimated claims to be
 9 paid, available for appropriation to the General Fund during the 2008-2010 biennium.
 10 The secretary of the Finance and Administration Cabinet shall determine when to initiate
 11 the sale of securities based on the market structure and the financial status of the
 12 Commonwealth at the time.

13 ➔Section 15. The provisions of Sections 7 to 10 of this Act shall apply
 14 retroactively to all outstanding refund claims for taxable years ending prior to the
 15 effective date of this Act and shall apply to all claims for those taxable years pending in
 16 any judicial or administrative forum.

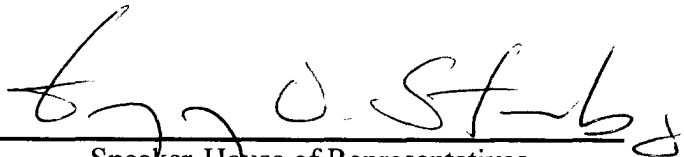
17 ➔Section 16. The provisions of Section 13 of this Act take effect August 1, 2009.

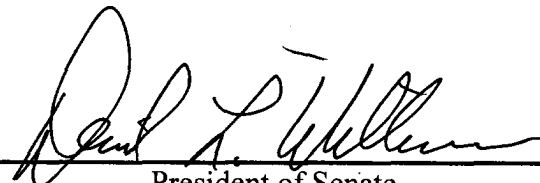
18 ➔Section 17. The intent of the General Assembly in repealing and reenacting
 19 KRS 136.392, 138.195, 141.160, 160.6156, 160.6157, 160.6158, 131.183, 141.044,
 20 141.235, 134.580, 393.060, and 157.621 in Sections 1 to 12 of this Act is to affirm the
 21 amendments made to these sections in 2008 Ky. Acts ch. 132. The provisions in Sections
 22 1 to 12 of this Act shall apply retroactively to April 24, 2008.

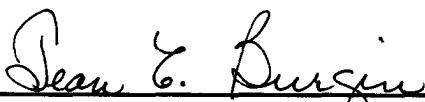
23 ➔Section 18. To the extent that any provision included in this Act is considered
 24 new language, the provisions of KRS 446.145 requiring such new language to be
 25 underlined are notwithstanding.

26 ➔Section 19. Whereas it is necessary to expediently address issues originally
 27 addressed in 2006 Ky. Acts ch. 252, an emergency is declared to exist, and Sections 1 to

- 1 12 of this Act take effect upon the Act's passage and approval by the Governor or upon its
- 2 otherwise becoming a law.


Speaker-House of Representatives


President of Senate

Attest: 
Chief Clerk of House of Representatives

Approved 
Governor

Date March 24, 2009